Citation: Allen v. Alberta, 2003 SCC 13, [2003] 1 S.C.R. 128
Date: March 20, 2003
Docket: 28834

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Allen *v.* Alberta, [2003] 1 S.C.R. 128, 2003 SCC 13

The Crown in Right of Alberta and Jim Dixon, Public Service Commissioner of Alberta *Appellants*

v.

Audrey Allen, William Bentley, Faye Chorney, B.C. Desai, Po Y. Fok, Cynthia Formaniuk, Larry Fraser, Cecile Gartner, George Gordon, Joseph Huba, Allan Jones, James Kocyba, Sai-Bong Lee, Patrick Malcolmson, Donald Maltais, Harold Matheson, Robert Osokin, Christine Ostanoski, George Parsons, Beverly Peterson, Satwant Rakhra, Alfred Richards, Robert Roseberg, Fernando Raul Scherpenisse, Duane Sears, Volesh Shaikh, Normin Simpson, Robin Sundstrom, Christine Vaillancourt, Donna Vanderbrink, Daniel Warkentin, Edward Waud and Nyuk-Ken Wong *Respondents*

Indexed as: Allen *v.* Alberta

Neutral citation: 2003 SCC 13.

File No.: 28834.

Hearing and judgment: December 10, 2002.

Reasons delivered: March 20, 2003.

Present: McLachlin C.J. and Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the court of appeal for alberta

Labour relations — Arbitration — Jurisdiction of forums other than arbitration board — Crown employees' positions privatized — Employees accepting employment with private employer — Collective agreement providing for severance pay — Letter of intent between government and union providing that employees not entitled to severance pay on acceptance of employment with private employer — Letter of intent stating that it is not part of collective agreement and not subject to grievance procedure — Employees seeking declaration of entitlement to severance pay in civil courts — Whether civil courts could be seized of claim.

When the respondents' positions in the Alberta public service were privatized, they accepted work with the Association that took over that work. Although their collective agreement with the Alberta government provided for severance pay, a letter of intent signed by the government and the union provided that these employees would have to resign from the public service and would not be entitled to severance pay. It also stated that it did not form part of the collective agreement and was not subject to its grievance procedure. The respondents brought an action seeking a declaration of entitlement to severance pay in the Court of Queen's Bench. That court struck the claim and stayed the action because the claim arose out of the collective agreement. A majority of the Court of Appeal allowed an appeal from that decision.

Held: The appeal should be allowed.

Claims arising out of a collective agreement should be dealt with exclusively under the grievance procedure established in accordance with the agreement or the relevant labour legislation. As a general rule, such claims should be disposed of by labour arbitrators and regular civil courts do not retain concurrent jurisdiction over them. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

Here, any entitlement to severance was based on the collective agreement. The letter of intent did not change the legal situation of the parties. Any claim that severance pay had been lost through resignations procured under duress would have fallen in all its aspects within the jurisdiction of the arbitrator. In the course of the arbitration, the question as to whether the letter of intent was a bar to the claim would have been raised and dealt with by the arbitrator. Even if it was not formally a part of the collective agreement, the letter was at least an agreement which addressed potential grievances and the status of employees who were being transferred to a new employer. In a context where no claim of unfair or inadequate union representation had been advanced, such issues remained a matter for the arbitrator and for the process of collective negotiation between the employer and the union.

Cases Cited

Applied: *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929; *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360, 2000 SCC 14; **referred to:** *Hémond v. Coopérative fédérée du Québec*, [1989] 2 S.C.R. 962; *Noël v. Société d'énergie de la Baie James*, [2001] 2 S.C.R. 207, 2001 SCC 39.

Statutes and Regulations Cited

ta Rules of Court, Alta. Reg. 390/68, Rule 129(1).

ur Relations Code, S.A. 1988, c. L-1.2, Div. 5, ss. 38(1), 133, 134.

e Service Employee Relations Act, R.S.A. 1980, c. P-33, ss. 25 [am. 1994, c. 19, s. 2(6)], 61 [am. 1994, c. 40, s. 10].

e Service Employee Relations Act, S.A. 1977, c. 40, ss. 25, 61, 99.

Authors Cited

n, Rodrigue, et Fernand Morin. *Droit de l'arbitrage de grief*, 5e éd. Cowansville, Qué.: Yvon Blais, 2000.

APPEAL from a judgment of the Alberta Court of Appeal, [2001] 9 W.W.R. 609, 93 Alta. L.R. (3d) 213, 286 A.R. 132, [2001] A.J. No. 863 (QL), 2001 ABCA 171, setting aside a judgment of the Court of Queen's Bench (1999), 245 A.R. 32, [1999] A.J. No. 529 (QL), 1999 ABQB 352. Appeal allowed.

David Ross, *Q.C.*, and *Hugh J. D. McPhail*, *Q.C.*, for the appellants.

G. Brent Gawne, for the respondents.

The judgment of the Court was delivered by

LEBEL J.—

I. Introduction

1 This appeal concerns the relationship between the jurisdictions of labour arbitrators and that of the courts in respect of claims arising out of employment relationships. The Court of Appeal of Alberta has held that the respondents can claim severance pay from the Government of Alberta in the Court of Queen's Bench of Alberta, after the privatization of boiler inspection functions by Alberta and the respondent's acceptance of a transfer to a new private employer, which had agreed to take over the inspection functions. For the reasons which follow, I am of the view that the claims, such as they are, fall within the competence of a labour arbitrator, that they were properly struck by the motions court judge under Rule 129 of the *Alberta Rules of Court*, Alta. Reg. 390/68, and that the appeal should be allowed.

II. Background

2 Prior to 1994, the respondents were civil servants and worked in the Boiler and Pressure Vessels Safety Branch of the Alberta Government. The Alberta Union of Provincial Employees had been certified as the respondents' bargaining agent pursuant to s. 99 of the *Public Service Employee Relations Act*, S.A. 1977, c. 40 ("*PSERA*"). Section 25 of the *PSERA* had granted exclusive bargaining rights to the Union in respect of the respondents and other civil servants. The same section provided that Division 5 of Part 2 of the *Labour Relations Code*, S.A. 1988, c. L-1.2 ("Code"), applied to this bargaining unit. The Union was thus granted exclusive authority to bargain collectively on behalf of the unit and to bind its members by a collective agreement.

3 As provided by this labour relations regime, the Alberta Government and the Union had entered into a collective agreement which determined the conditions of employment of the respondents. As required by s. 61 of the *PSERA*, which adopts ss. 133 and 134 of the Code, the agreement incorporated a grievance procedure to settle differences between the parties. Section 29(a) of the labour agreement defined a grievance as:

> . . . a difference arising out of the interpretation, application, operation or any contravention or alleged contravention of this Agreement or as to whether any such difference can be the subject of adjudication.

4 The agreement also provided for severance pay in the event of termination of employment. Pursuant to s. 15.13, compensation would be payable to employees released from the public service, based on the length of their service, up to a maximum of 25 weeks' pay.

5 In 1994, the Alberta Government decided to reduce the size and cost of the public service in the province. In the course of implementing this plan, it decided to privatize its boiler inspection services, apart from some core and critical functions. Most positions in the service became redundant. The employees thus affected were given notice that their positions would be terminated. The inspection functions were mostly delegated to a private group, the Alberta Boiler Safety Association. Under the collective agreement, the respondents would have been entitled to severance pay, if they could not be re-assigned to other duties within the public service of Alberta.

6 Negotiations took place between the Government and the Union. On December 16, 1994, the two sides signed a letter of intent which addressed the situation of the respondents. It provided that they would be offered employment by the Alberta Boiler Safety Association. If they accepted a position with this association, they would have to resign from the public service and would not be entitled to severance pay under the collective agreement. Paragraph 8 of the letter of intent stated that it did not form part of the collective agreement and was not subject to its grievance procedure:

> This letter does not form part of the Collective Agreement and if concerns arise with respect to its interpretation and application, they shall be addressed by representatives of the Parties and not by way of the grievance procedure.

7 The respondents accepted employment with the new inspection association and duly resigned from the public service. Some years later, they made a claim for severance pay. They asserted that their resignations had not been voluntary and that they were still entitled to severance pay. Except for two of them who had also filed grievances, they went directly to the civil courts. They requested a declaration that they were entitled to severance pay in accordance with the collective agreement. By that time, all deadlines for filing grievances had long since passed. The appellants responded by filing a motion to strike the action under Rule 129 of the *Alberta Rules of Court*. The motion asserted that the claim should be struck down because it fell outside the jurisdiction of the Court of Queen's Bench.

III. Judicial History

A. *Alberta Court of Queen's Bench* (1999), 245 A.R. 32, 1999 ABQB 352

8 Gallant J. granted the motion to strike and stayed the action. In his view, the claim arose out of the collective agreement and concerned the rights and obligations of the parties under that contract. The resolution of the dispute belonged to the grievance procedure,

not to the process of the civil courts. It was thus a proper case for the application of Rule 129. Given the nature of the claim, it was plain and obvious that the action should be dismissed.

B. *Alberta Court of Appeal*, [2001] 9 W.W.R. 609, 2001 ABCA 171

9 The respondents appealed the staying of their action. A majority of the Court of Appeal, Côté J.A. dissenting, allowed the appeal and dismissed the motion to strike. The majority reasons, written by Wittmann J.A., found that it was not plain and obvious that the claim should be dismissed. Given that the letter of intent barred the application of the grievance procedure, it could not be said that the jurisdiction of the Court of Queen's Bench had been ousted. The action was a claim for compensation which should be allowed to proceed to trial. Côté J.A. took a different view. He found that the claim arose from the collective agreement, and that the matter should be left to the grievance procedure and to the jurisdiction of labour arbitrators. In the alternative, he found that if the letter were a separate collective agreement, the model grievance clause in s. 134 of the Code would apply so as to exclude the jurisdiction of civil courts. As a result, he would have dismissed the appeal. The appellants were granted leave to appeal to this Court.

IV. Relevant Legislative Provisions

Alberta Rules of Court, Alta. Reg. 390/68

> **129(1)** The court may at any stage of the proceedings order to be struck out or amended any pleading in the action, on the ground that
>
> it discloses no cause of action or defence, as the case may be, or
>
> it is scandalous, frivolous or vexatious, or
>
> it may prejudice, embarrass or delay the fair trial of the action, or
>
> it is otherwise an abuse of the process of the court,
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly.

Public Service Employee Relations Act, R.S.A. 1980, c. P-33

> **25(1)** A trade union may apply to the Board to be certified as the bargaining agent for the employees in a unit that the trade union considers appropriate for collective bargaining, and in that case Division 5 of Part 2 of the *Labour Relations Code* applies, subject to subsection (2).
>
> **(2)** In an application for certification under this Part where the employer is the Crown in right of Alberta, the unit must be the single bargaining unit constituted under section 18.

(3) In an application for certification under this Part where the employer is an employer to whom section 19 applies, the Board shall not certify the unit applied for or a unit reasonably similar to it unless the Board is satisfied that that unit is more appropriate for collective bargaining than the single bargaining unit constituted under section 19.

61 Sections 132 to 144 of the *Labour Relations Code* apply in respect of collective agreement arbitration under this Act, except that in sections 134(e), 135(1), 136(1)(a) and (b) and 139(2) and (4) of the Code, the references to "Director" shall be read as references to "Board".

Labour Relations Code, S.A. 1988, c. L-1.2

When a trade union becomes a certified bargaining agent, it

(a) has exclusive authority to bargain collectively on behalf of the employees in the unit for which it is certified and to bind them by a collective agreement, and

(b) immediately replaces any other bargaining agent for employees in the unit for which it is certified.

133 Every collective agreement shall contain a method for the settlement of differences arising

(a) as to the interpretation, application or operation of the collective agreement,

(b) with respect to a contravention or alleged contravention of the collective agreement, and

(c) as to whether a difference referred to in clause (a) or (b) can be the subject of arbitration

between the parties to or persons bound by the collective agreement.

134 If a collective agreement does not contain the provisions required under section 133, the collective agreement shall be deemed to contain those of the following provisions in respect of which it is silent:

(a) If a difference arises between the parties to or persons bound by this collective agreement as to the interpretation, application, operation or contravention or alleged contravention of this agreement or as to whether such a difference can be the subject of arbitration, the parties agree to meet and endeavour to resolve the difference.

(b) If the parties are unable to resolve a difference referred to in clause (a), either party may notify the other in writing of its desire to submit the difference to arbitration.

The notice referred to in clause (b) shall

(i) contain a statement of the difference, and

(ii) specify the name or a list of names of the person or persons it is willing to accept as the single arbitrator.

(d) On receipt of a notice referred to in clause (b), the party receiving the notice,

(i) if it accepts the person or one of the persons suggested to act as arbitrator, shall, within 7 days, notify the other party accordingly, and the difference shall be submitted to the arbitrator, or

(ii) if it does not accept any of the persons suggested by the party sending the notice, shall, within 7 days, notify the other party accordingly and send the name or a list of names of the person or persons it is willing to accept as the single arbitrator.

(e) If the parties are unable to agree on a person to act as the single arbitrator either party may request the Director in writing to appoint a single arbitrator.

(f) The arbitrator may, during the arbitration, proceed in the absence of any party or person who, after notice, fails to attend or fails to obtain an adjournment.

(g) The arbitrator shall inquire into the difference and issue an award in writing, and the award is final and binding on the parties and on every employee affected by it.

(h) The parties agree to share equally the expenses of the arbitrator.

(i) Except as permitted in clause (j), the arbitrator shall not alter, amend or change the terms or conditions of the collective agreement.

(j) If the arbitrator by his award determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject-matter of the arbitration, the arbitrator may substitute any penalty for the discharge or discipline that to him seems just and reasonable in all the circumstances.

V. Analysis

A. *The Issues*

11 Argument in this Court was limited to the following jurisdictional issue: could the civil courts be seized of the respondents' claim? Although there was some discussion in the courts below about the procedural issues arising out of the use of the motion to strike, there is now no dispute between the parties that, if the jurisdictional argument advanced by the appellants is well founded, Rule 129 of the *Alberta Rules of Court* does apply, as found by Gallant J. in the Court of Queen's Bench.

B. *The Jurisdictional Issue*

12 The problem facing our Court is well defined and narrow. Its solution depends on the proper application of principles set out by our Court in *St. Anne Nackawic Pulp & Paper Co. v. Canadian Paper Workers Union, Local 219*, [1986] 1 S.C.R. 704. Those principles were refined in the later cases of *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, and *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, [2000] 1 S.C.R. 360, 2000 SCC 14. In a nutshell, these cases stand for the principle that, in accordance with the legislative intent evidenced by the labour relations schemes implemented since the Second World War in Canada, such as the Alberta statutes which apply in this appeal, disputes arising out of the interpretation, application or violation of a collective agreement should be dealt with exclusively under the grievance procedure established in accordance with the agreement or the relevant labour legislation. As a general rule, provided though that they fall within the ambit of the collective agreement, such disputes should be disposed of by labour arbitrators and regular civil courts do not retain concurrent jurisdiction over them.

13 The judgment of our Court in *St. Anne Nackawic* brought to an end a long period of jurisprudential development and uncertainty as to the respective roles of labour arbitrators and courts in the enforcement of collective agreements. It adopted a model of exclusive jurisdiction of arbitrators over disputes arising from collective agreements, rather than upholding the overlapping jurisdiction of common law courts over such conflicts. This model reflects the nature of the labour relations regime which has existed in Canada for a number of years. A certified bargaining agent holds exclusive bargaining rights in respect of a group of employees. It represents all the members of the unit and negotiates with the employer to arrive at a collective agreement that defines their employment conditions. This agreement binds the union, the employees and the employer. The union is held to a duty of fair representation of the employees it represents. (See *Hémond v. Coopérative fédérée du Québec*, [1989] 2 S.C.R. 962, at p. 975, *per* Gonthier J.; *Noël v. Société d'énergie de la Baie James*, [2001] 2 S.C.R. 207, 2001 SCC 39, at pp. 227-29.)

14 The *Weber* and *City of Regina* cases have addressed the problem of identifying those disputes which are within the scope of the arbitrator's jurisdiction. In these judgments, our Court has adopted a flexible and contextual method which seeks to avoid formalistic classifications. The analysis should focus on an inquiry into the essential nature of the dispute:

> The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

> (*Weber*, *supra*, at para. 52, McLachlin J. (as she then was); see also R. Blouin and F. Morin, *Droit de l'arbitrage de grief* (5th ed. 2000), at pp. 147-48.)

15 Our Court re-affirmed the validity of this analytical approach in *City of Regina*. It acknowledged that labour arbitrators have been granted broad jurisdiction over labour disputes. Nevertheless, only disputes which explicitly or inferentially arise out of a collective agreement are foreclosed to the courts (*City of Regina*, at para. 22, *per* Bastarache J.). In order to ascertain whether the dispute arises out of the collective agreement, the essential nature of the dispute must be identified. At the same time, it is necessary to consider the ambit of the agreement and whether it covers the facts of the dispute:

> Simply, the decision-maker must determine whether, having examined the factual context of the dispute, its essential character concerns a subject matter that is covered by the collective agreement. Upon determining the essential character of the dispute, the decision-maker must examine the provisions of the collective agreement to determine whether it contemplates such factual situations. It is clear that the collective agreement need not provide for the subject matter of the dispute explicitly. If the essential character of the dispute arises either explicitly, or implicitly, from the interpretation, application, administration or violation of the collective agreement, the dispute is within the sole jurisdiction of an arbitrator to decide.
>
> (*City of Regina*, at para. 25)

16 The application of this analytical method can lead to but one conclusion in the present case: the claim of the respondents was a dispute arising out of the application or violation of a collective agreement. Severance pay had been provided under s. 15.03 of the collective agreement. Any entitlement to severance was based on the collective agreement. Absent this provision, the respondents' right to the severance pay they claim does not exist. The letter of intent did not change the legal situation of the parties. Any claim that severance pay had been lost through resignations procured under duress would have fallen in all its aspects within the jurisdiction of the arbitrator. In the course of the arbitration, the question as to whether the letter of intent was a bar to the claim would have been raised and dealt with by the arbitrator. Even if it was not formally a part of the collective agreement, the letter was at least an agreement which addressed potential grievances and the status of employees who were being transferred to a new employer. In a context where no claim of unfair or inadequate union representation had been advanced, such issues remained a matter for the arbitrator and for the process of collective negotiation between the employer and the union.

17 Much was made in the course of this appeal of the argument that such a result appeared inherently unfair, as it would leave respondents without a proper forum for their claims. First, as noted above, they failed even to at least explore before the proper arbitral forum whether they had rights under the collective agreements. Secondly, inasmuch as any rights they might have asserted, on the facts of this case, would flow from collective contracts, the shifting of the disputes from an arbitration board to the regular civil courts would neither change the substantive nature of their rights nor add to them.

VI. Disposition

18 For these reasons, the appeal is allowed, the judgment of the Alberta Court of Appeal is reversed, and the judgment of the Court of Queen's Bench staying the action is reinstated, with costs throughout.

Appeal allowed with costs.

Solicitors for the appellants: McLennan Ross, Edmonton.

Solicitors for the respondents: G. Brent Gawne & Associates, Edmonton.

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